NO.
(King County Superior Court No. 19-2-30171-6 SEA)

SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY; GARFIELD COUNTY TRANSPORTATION AUTHORITY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; and MICHAEL ROGERS,

Respondents,

v.

STATE OF WASHINGTON,

Petitioner.

EMERGENCY MOTION FOR STAY PENDING REVIEW

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I. INTRODUCTION

When Washington voters approved Initiative 976, they sent a clear message that they wanted to reduce vehicle taxes and fees, a result that should have occurred as soon as the measure began taking effect on December 5, 2019. But the voters' will is now stymied by a preliminary injunction. That injunction is legally flawed and based on speculative and distant harms, and should ultimately be reversed by this Court. In the meantime, the only way to protect the voters' will is for this Court to stay the injunction so that I-976 can take effect as our Constitution specifies. Failure to do so would frustrate the will of the voters without justification and force hundreds of thousands of Washingtonians to pay vehicle taxes and fees higher than they should now owe. The Court should grant a stay.

II. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that this Court stay the trial court's Order Granting Plaintiffs' Motion for Preliminary Injunction (App. at 830-838) before December 5, 2019. Pursuant to article II, section 1(d) of the Washington Constitution, Initiative 976 "shall be in operation on and after" December 5. The trial court's Order should be stayed so that Initiative 976 may take effect on the constitutionally-specified date.

III. FACTS RELEVANT TO MOTION[1]

In November 2019, for the third time since 1999, Washington voters adopted an initiative to substantially reduce motor vehicle taxes and fees. *See* Laws of 2003, ch. 1 (I-776); Laws of 2000, ch. 1 (I-695). Nearly 53% of Washington voters approved Initiative 976. App. at 508. More than one million Washingtonians voted in favor of the initiative. *Id*.

I-976 reduces motor vehicle taxes and fees in several ways. *See* I-976 (App. at 540-58) (hereinafter I-976), § 1. It repeals or reduces certain taxes and fees, *id.*, §§ 3-5, 7, it removes or limits the authority of certain governmental entities to impose or collect other vehicle taxes and fees, *id.*, §§ 6, 10-13, and it reduces motor vehicle excise taxes by changing how vehicles are valued, *id.*, §§ 8-9, 11. I-976 also recognizes the authority of Washington voters to approve additional fees after its effective date. *Id.*, § 2.

I-976's repeal, reduction, and removal of motor vehicle taxes and fees will result in substantial savings to Washington vehicle owners, who must register their vehicles yearly with the Department of Licensing (Department). RCW 46.16A.030, RCW 46.16A.040, RCW 46.16A.110. At registration, vehicle owners must pay all applicable fees and taxes,

[1] This motion is supported by the subjoined Declaration of Alan D. Copsey and the materials contained in the Appendix.

RCW 46.16A.040(3), RCW 46.16A.110(1), including transportation benefit district (TBD) fees authorized under RCW 82.80.140.

Every month, roughly 600,000 Washingtonians file original or renewal registrations for the classes of vehicles affected by I-976. App. at 681, ¶ 4. Under I-976, owners of those vehicles will no longer pay numerous vehicle taxes and fees, including the passenger weight fee, I-976, § 6; motorhome weight fee, *id.*; and any TBD fees, *id*; *see also* App. at 654-57. In addition, the following fees are lowered to $30: vehicle weight fee for vehicles under 10,000 pounds, I-976, § 4; electric vehicle fee, *id.* § 5; snowmobile registration, *id.* § 3; and commercial trailer fee, *id.* § 3; *see also* App. at 654-57. And Washington residents who purchase cars will no longer have to pay the additional 0.3% sales tax on the car's selling price. I-976, § 7.

Under I-976, Washington motor vehicle owners are expected to save roughly $300 million annually in state motor vehicle taxes and fees. *See* App. at 568. Motor vehicle owners in the 62 municipalities across the state that impose TBD vehicle fees will save an additional $58 million annually. *Id.* at 569.

A. Local Transportation Revenue Sources

Local governments in Washington have several revenue sources available to fund transportation, from a range of taxes to state and federal grants. *See, e.g.*, RCW 36.73.040 (sales and use tax); 82.80.010 (special fuel tax); 82.80.030 (commercial parking tax). These sources can generate substantial revenue. For example, Plaintiff City of Seattle has an annual transportation budget of approximately $634 million. App. at 486. The City's transportation budget has increased by almost $200 million over the last two years. *See id.* And Seattle's Transportation Benefit District has a $20 million reserve fund. *See* App. at 432.

Similarly, King County Metro Transit Department (Metro), which provides public transportation services in King County, has an annual operating budget of more than $949 million. App. at 103, ¶¶ 3-4. The City of Seattle contracts with Metro to provide transportation services in the Seattle metropolitan area. *See* App. at 104, ¶ 7 and Ex. 1 (App. at 112).

B. Department of Licensing Implementation of Initiative 976

Since the November 5, 2019, General Election, the Department of Licensing has dedicated extensive time and resources to implementing I-976. App. at 660, ¶ 5. Department programmers, contractors, and other staff have spent over 350 business hours preparing for implementation of I-976. *Id.* ¶¶ 6, 8. As a result of its significant efforts and expenditures, the

Department was prepared to implement the parts of I-976 that take effect December 5, 2019. *Id.* ¶ 9.

C. Procedural Posture

Shortly after Washington voters approved I-976, several governmental agencies and other plaintiffs filed a lawsuit challenging I-976 in King County Superior Court. Plaintiffs filed a motion for preliminary injunction on November 18, 2019. The trial court held a hearing on that motion on November 26, and, on November 27, issued an 8-page Order granting Plaintiffs' motion. App. at 830-838.

In its Order, the trial court identified a single legal issue on which it concluded that Plaintiffs were likely to prevail. App. at 835. Specifically, the trial court concluded that the ballot title's reference to an exception for "voter-approved charges" "raised substantial concerns as to whether I-976's ballot title is misleading." *Id.* The trial court then concluded that Plaintiffs had a "well-grounded fear of immediate invasion of the rights afforded by the Washington Constitution due to implementation of I-976." *Id.* "In balancing the equities, the interests, and the relative harms to the parties and the public," the trial court found that "the harms to Plaintiffs resulting from implementation of I-976 outweigh the harms faced by Defendant State of Washington and the public if implementation of I-976 is stayed." App. at 836.

In making this determination, the trial court considered harm that might occur during "the months or potentially years that it could take for all issues in the case to be addressed through appellate review." App. at 836-37. The trial court expressly declined to limit its analysis, for purposes of a preliminary injunction, to "the one or two months beyond December 5, 2019 that it might take for this Court to consider all parties' motions and issue a final ruling on I-976's constitutionality." App. at 836.

In granting Plaintiffs' motion for preliminary injunction, the trial court stayed the effective date of I-976 pending further order of the court. App. at 837. The trial court ordered the State of Washington to "continue to collect all fees, taxes, and other charges that would be subject to or impacted by I-976 were it not stayed." App. at 837.

IV. GROUNDS FOR RELIEF

A. Standards for Granting a Stay

RAP 8.1(b)(3) and 8.3 give this Court "discretion to stay the enforcement of trial court decisions." *Moreman v. Butcher*, 126 Wn.2d 36, 42 n.6, 891 P.2d 725 (1995); *see also In re Koome*, 82 Wn.2d 816, 818-19, 514 P.2d 520 (1973). The rules expressly permit this Court to stay the enforcement of a trial court's Order "before . . . acceptance of review." RAP 8.1(b)(3); RAP 8.3.

When evaluating a request to stay enforcement under RAP 8.1(b)(3), this Court must "(i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed." When evaluating a request for stay under RAP 8.3, this Court considers whether the issue presented on appeal is debatable and whether the stay is "necessary to preserve for the movant the fruits of a successful appeal, considering the equities of the situation." *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985).

Courts apply these factors using a sliding scale approach, balancing the two factors. *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716 P.2d 956 (1986). So, for example, "if the harm is so great that the fruits of a successful appeal would be totally destroyed pending its resolution, relief should be granted, unless the appeal is totally devoid of merit." *Id.* By the same token, a showing of debatable issues on appeal does not require the moving party to demonstrate ultimate success on the merits of the appeal, but simply that the issue is a debatable one. *Kennett v. Levine*, 49 Wn.2d 605, 607, 304 P.2d 682 (1956).

B. The Issues Are, At a Minimum, Debatable

It cannot meaningfully be disputed that this appeal presents (at least) debatable issues; the trial court acknowledged as much in its Order. The sole legal basis for the trial court's injunction was that Plaintiffs are likely to succeed on their article II, section 19 "subject-in-title" challenge. App. at 835. But the trial court recognized that "there exist plausible arguments supporting the conclusion that I-976 does not violate the subject-in-title rule." *Id.* Not only are those arguments plausible, they are dispositive. I-976's ballot title informs voters as to the measure's scope and purpose, and would lead inquiring voters to read the initiative for more detail, which is precisely what article II, section 19 requires.

1. I-976's ballot title accurately informs voters of the subject of the measure

The purpose of the subject-in-title requirement of article II, section 19 is to ensure that voters are put on proper notice "of the subject matter of the measure." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207, 11 P.3d 762 (2001) (*ATU*). A ballot title satisfies this rule "'if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.'" *Pierce Cty. v. State*, 150 Wn.2d 422, 436, 78 P.3d 640 (2003) (*Pierce Cty. I*),

(quoting *YMCA v. State*, 62 Wn.2d 504, 506, 383 P.2d 497 (1963)). I-976's ballot title does both.

a. The ballot title appropriately notifies voters of the scope and purpose of I-976

The ballot title sufficiently notifies voters of I-976's scope and purpose. "A ballot title consists of a statement of the subject of the measure, a concise description of the measure, and the question of whether or not the measure should be enacted into law." *Fritz v. Gorton*, 83 Wn.2d 275, 290, 517 P.2d 911 (1974) (citing RCW 29A.72.040). I-976's ballot title says:

> Statement of Subject: Initiative Measure No. 976 concerns motor vehicle taxes and fees.
>
> Concise Description: This measure would repeal, reduce, or remove authority to impose certain vehicle taxes and fees; limit annual motor-vehicle-license fees to $30, except voter-approved charges; and base vehicle taxes on Kelley Blue Book value.
>
> Should this measure be enacted into law? Yes [ ] No [ ]

App. at 305. This is more than enough to "indicate to an inquiring mind the scope and purpose of the law." *See Pierce Cty. I*, 150 Wn.2d at 436 (finding similar initiative and ballot title compliant with subject-in-title rule). As this Court has repeatedly held, a ballot title can be "broad and general," and "need not be an index to the contents, nor must it provide details of the measure." *Wash. Ass'n for Substance Abuse & Violence*

Prevention v. State, 174 Wn.2d 642, 660, 278 P.3d 632 (2012) (*WASAVP*) (collecting cases).

Plaintiffs argued below that I-976's ballot title is similar to that which was struck down for I-695, but they differ meaningfully. *See* App. at 51. I-695's ballot title violated the subject-in-title rule because it only put voters on notice of new limits for future tax increases, not new limits for increases to other charges and fees. *ATU*, 142 Wn.2d at 227. In contrast, I-976's ballot title broadly states that it affects "certain vehicle taxes and fees." This is more than sufficient to "indicate to an inquiring mind the scope and purpose of the law." *Pierce Cty. I*, 150 Wn.2d at 436.

b. The ballot title provides enough detail to prompt inquiring minds to read the initiative for more information

I-976's ballot title, which used all of the words allowed by law, is "sufficiently detailed to prompt an inquiring mind to read the initiative for further details." *See Pierce Cty. I*, 150 Wn.2d at 436; RCW 29A.72.050.

While I-976's ballot title does not individually list the vehicle taxes and fees the measure impacts, its reference to "certain vehicle taxes and fees" is enough to cause an inquiring voter to read the initiative to learn which "vehicle taxes and fees" were impacted. I-976, §§ 2-13, 16. The initiative specifically addresses motor vehicle license fees, electric vehicle fees, motor vehicle weight fees, motor vehicle excise taxes, transportation

benefit district vehicle fees, and vehicle sales and lease taxes as the "certain vehicle taxes and fees" referenced in the title. I-976, §§ 2-13, 16.

Likewise, I-976's ballot title generally identifies a "voter-approved charges" exception to the $30 cap on "motor-vehicle-license fees," but does not specify all of the details associated with that exception. Rather, inquiring voters would have to read the initiative to learn the details. I-976, §§ 2-4. This is exactly what the subject-in-title rule requires.

A ballot title need not—and cannot, in the 30 words available—provide a detailed index to a measure's contents. *WASAVP*, 174 Wn.2d at 660; *Pierce Cty. I*, 150 Wn.2d at 436. It complies with the subject-in-title rule if it contains enough information to prompt reasonable inquiring minds to read the initiative for further detail. *Pierce Cty. I*, 150 Wn.2d at 436. The ballot title to I-976 did exactly that.

2. The ballot title is not misleading

While otherwise finding no constitutional fault with I-976, the trial court found Plaintiffs raised "substantial concerns" that I-976's ballot title is "misleading" because it refers to a "voter-approved charges" exception to the $30 limit for motor-vehicle-license fees without specifying that only charges approved after I-976 would apply. *See also WASAVP*, 174 Wn.2d at 661 (precluding "misleading or false" "material representations in the title" that are "grave" and "palpable"). But the ballot title's reference to

"voter-approved charges" is not misleading or inaccurate, and it provides enough information to prompt inquiring minds to read the initiative to learn the particulars of that exception.

As a starting point, it is entirely appropriate for the ballot title to reference voter-approved charges as an exception to the $30 cap on "motor-vehicle-license fees," because I-976 provides for that exception. I-976, § 2 (specifying that "charges approved by voters after the effective date of this section" are not included in the cap). Thus, it is accurate and appropriate for the ballot title to reference voter-approved charges as an exception to the $30 cap on motor-vehicle-license fees.

While there is insufficient space in the ballot title to specify the temporal limitations and other details associated with the voter-approval exception, the general reference to the exception would, in turn, prompt inquiring minds to read the initiative for further detail. *See Pierce Cty. I*, 150 Wn.2d at 436. Any person doing so would learn from Section 2 of the initiative that only charges approved by the voters after I-976's effective date could be imposed over the $30 cap on motor-vehicle-license fees. I-976, § 2.

Plaintiffs argued to the trial court that the title misled voters into thinking that any "voter-approved charges in excess of $30 would be retained, or that at least voters would retain the authority to approve such

vehicle charges." App. at 49. But that is not what the title says. The title first clearly informs voters that the measure would broadly "repeal, reduce, or remove authority to impose certain vehicle taxes and fees," without exempting voter-approved charges. In a separate clause, the title explains that one specific type of vehicle fee, "annual motor-vehicle-license fees," would be limited "to $30, except voter-approved charges." The title thus does not say that all existing vehicle taxes and fees above $30 would continue if voter approved, nor that future voters could broadly increase vehicle taxes or fees beyond $30; both the limit and the voter-approval option are specific to the fee mentioned in that clause, "motor-vehicle-license fees," a specific type of fee collected only by the State and regulated by the Washington Constitution. *See* RCW 46.04.671.

Plaintiffs also claimed that it was misleading for the ballot title to inform voters that the $30 cap was subject to "voter-approved" increases (as stated in Sections 1 and 2 of the initiative), when Section 6 repealed the authority for TBDs to levy voter-approved vehicle fees. *See* App. at 49. But Plaintiffs incorrectly conflate the TBD vehicle fees authorized in RCW 82.80.140 with the motor-vehicle-license fees imposed in RCW 46.17.350 and .355. By its own language, RCW 82.80.140 distinguishes the TBD "vehicle fees" authorized in that section from the "vehicle license fees" authorized under RCW 46.17.350 and .355. Similarly, RCW

46.04.671, which defines "vehicle license fees" for purposes of Title 46, makes clear that the term "does not include . . . taxes and fees collected by the department [of licensing] for other jurisdictions," such as TBDs. In short, although motor-vehicle-license fees under chapter 46.17 RCW and TBD vehicle fees approved under RCW 82.80.140 are collected together, they are two separate fees. Notifying voters, as the ballot title did, that the measure limited "motor-vehicle-license fees to $30, except voter-approved charges," was not misleading or false given that TBD fees are separate and would not be subject to the voter-approval exception.[2]

For the same reason, the repeal of the authority to submit MVETs to voters is not in conflict with the reference to voter-approved charges for motor-vehicle-license fees. *See* App. at 50. MVETs are taxes that are separate and distinct from motor-vehicle-license fees. The title describing the $30 cap and voter approval exception for "motor-vehicle-license fees" did not mean that they would also apply to distinct taxes.

I-976's ballot title accurately communicates the material provisions of I-976: to repeal, reduce, or remove authority to impose

[2] The distinction between "vehicle license fees" collected under chapter 46.17 RCW and "vehicle fees" collected by TBDs is also constitutionally important. Article II, section 40 of the Constitution requires that: "All fees collected by the State of Washington as *license fees* for motor vehicles … shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes" (emphasis added). But state law allows "vehicle fees" collected by TBDs to be used for non-highway purposes. *See, e.g.*, RCW 36.73.020, RCW 36.73.015(6). Thus, if "vehicle fees" under RCW 82.80.140 were not distinct from "vehicle license fees," it would call into question the constitutionality of using the fees for non-highway purposes.

certain vehicle taxes and fees, to limit annual motor-vehicle-license fees to $30, except voter-approved charges; and to base vehicle taxes on Kelley Blue Book value. Because the ballot title put voters on notice of I-976's subject, and would prompt inquiring minds to read the initiative for more detail, it does not violate the subject-in-title rule. Thus, the legal rationale supporting the injunction is untenable, weighing heavily in favor of a stay.

C. The Injury to the State and the People Outweighs the Harms Respondents Allege Harms

1. The Injury of the Stay to the State and the People Will Be Significant

Absent a stay, the State will be compelled to continue collecting the very "fees, taxes, and other charges" that Washington voters repealed and reduced by passing I-976. App. at 837. As more than 500,000 motor vehicle registrations are due for renewal in December 2019 alone, this will have a significant and immediate impact on Washington motor vehicle owners. App. at 644-45, ¶¶ 7-8; *see also* App. at 681, ¶ 4. The public has a strong interest in not being forced to pay the fees, taxes, and other charges that they just rejected.

Moreover, without a stay, the will of Washington voters will be impaired. As this Court has previously recognized, "the right of initiative is nearly as old as our constitution itself, deeply ingrained in our state's history, and widely revered as a powerful check and balance on the other

branches of government." *Coppernoll v. Reed*, 155 Wn.2d 290, 297, 119 P.3d 318 (2005). More than one million Washington voters chose to exercise "[t]he first power reserved by the people" to significantly reduce their motor vehicle taxes and fees. The trial court's injunction of I-976 overrides the will of those voters and ignores the public's strong interest in having its "powerful check and balance" implemented. *Id.* This injury to the will of the Washington electorate weighs heavily in favor of a stay.

There also are significant public costs from the injunction. If the trial court's injunction is not stayed and I-976 is ultimately upheld, the Department of Licensing will have to issue refunds for overpayments made during the pendency of the injunction. These refunds will come at a significant cost to taxpayers because "processing refunds is a time-intensive process." App. at 681, ¶ 6. It would take the Department of Licensing at least 45,000 business hours to issue refunds for each month the injunction is in place, requiring an additional 41.5 full-time employees. *Id.* ¶¶ 5-7. These significant and avoidable public expenditures also favor staying the trial court's preliminary injunction.

2. Allowing I-976 to Take Effect Will Not Create Significant Injuries to Respondents in the Short Term

Respondents will not suffer meaningful harm from implementation of I-976 during the period that a preliminary injunction would be in effect.

Because this case involves only constitutional questions, which are almost exclusively questions of law, it is capable of accelerated resolution. The trial court will quickly be able to either reject the lawsuit or issue a permanent injunction. Any injury that Plaintiffs suffer between now and such a resolution will be minimal and not a direct consequence of I-976.

The trial court focused on alleged harms to King County Metro, but those are unsupported by the record. The trial court found that Metro would immediately have to cut service if I-976 took effect because it "could not use other funding to pay for" that service. App. at 833. But Metro's own declaration said that these cuts would be necessary only if "no replacement funding is provided," App. at 105, ¶ 9, and ample replacement funding is available. Specifically, the service hours that would be cut are provided to the City of Seattle pursuant to a contract between the City and Metro at a cost of roughly $3 million monthly, *see* App. at 104-05, ¶ 8, and the City has $20 million in reserve funds just from its Transportation Benefit District revenue, plus additional revenue from its recent sale of the Mercer Megablock properties for $143.5 million. App. at 432; App. at 522. The reserve fund alone would allow the City and Metro to preserve current service levels for six months while the merits are litigated without making any cuts to other programs.

There is also no meaningful harm to the City of Seattle as a direct result of I-976. While the City asserts that it will no longer collect approximately $2.68 million in revenue in 2019 as a result of implementation of I-976, App. at 172, ¶¶ 5-6, the City has ample additional funds (detailed above) that could be used to prevent any reductions in services as a result of that decrease in revenue, *see, e.g.*, App. at 432, 522. Particularly for the short period necessary for a resolution of this case on the merits, I-976 does not compel any reductions in services that the City cannot offset with other revenues.

The final harm the trial court found was based on speculation by Plaintiffs about possible future impacts on state funding provided through the Multimodal Transportation Account. The trial court's Order acknowledges that the harms are necessarily speculative at this time: "Because the Legislature has not yet made any 'fund or cut' decisions stemming from Multimodal Account reductions, it is not yet possible for municipal Plaintiffs to prove which of their respective programs would be cut as a result of I-976." App. at 834. The trial court simply assumed that at least some Plaintiffs would suffer immediate, irreparable harm. *Id.* This assumption is not supported by the record. The declarations on which Plaintiffs rely acknowledge that "[t]he State legislature will need to determine which programs and projects to fund." App. at 106, ¶ 11; *see*

also App. at 374-75, ¶ 9 (same); App. at 379, ¶ 7 (same). It is entirely possible that the Legislature will find ways to offset the effects of I-976 through the use of existing funding and/or alternative revenue sources. Any reduction in state funding is thus wholly speculative. Moreover, because it would have to be the result of legislative action, it almost certainly would not occur before a decision on the merits.

3. The Equities Support a Stay of the Preliminary Injunction and an Expedited Determination on the Merits

On balance, the harm to the State and the People outweigh Respondents' alleged harm in the limited timeframe it will take the trial court to decide the case on the merits. Absent a stay, the State will be compelled to continue imposing—and the people will be compelled to continue paying—numerous motor vehicle taxes and fees despite the existence of a presumptively constitutional law passed by a majority of the Washington electorate reducing or eliminating those very taxes and fees. The possibility of a refund months or years in the future, at great expense to the State and taxpayers, is hollow comfort. This is particularly true given the absence of record evidence supporting Respondents' alleged harm during the narrow window required to allow the trial court to resolve expedited motions for summary judgment.

In addition, the State has already dedicated significant resources to implementing I-976 on its constitutionally-specified effective date of December 5, 2019. *See* App. at 660-61, ¶¶ 5-14. This expenditure of public resources further supports allowing I-976 to take effect.

Finally, staying the preliminary injunction serves the equities by ensuring that this matter is resolved as expeditiously as possible. If the preliminary injunction is stayed—and I-976 is allowed to take effect—all parties have an incentive to pursue dispositive motions as quickly as possible. Indeed, the State has already notified the trial court that it does not oppose an expedited resolution on the merits. Absent a stay, however, Respondents have every incentive to delay final resolution and to continue collecting the taxes and fees that the voters repealed through I-976.

V. CONCLUSION

For the foregoing reasons, this Court should grant the State's Motion for Emergency Stay Pending Review and order that the trial court's Order Granting Plaintiffs' Motion for Preliminary Injunction be stayed pending final resolution of this appeal.

RESPECTFULLY SUBMITTED this 2nd day of December 2019.

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DECLARATION OF SERVICE

I hereby declare that on this day true copies of the foregoing document were filed with the Court and served via CM/ECF and by email upon the following parties:

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DATED this 2nd day of December, 2019, at Seattle, Washington.

s/Morgan Mills
MORGAN MILLS
Legal Assistant

NO.

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner, v. GARFIELD COUNTY TRANSPORTATION AUTHORITY; KING COUNTY; CITY OF SEATTLE; WASHINGTON STATE TRANSIT ASSOCIATION; ASSOCIATION OF WASHINGTON CITIES; PORT OF SEATTLE; INTERCITY TRANSIT; AMALGAMATED TRANSIT UNION LEGISLATIVE COUNCIL OF WASHINGTON; and MICHAEL ROGERS, Respondents.	DECLARATION OF ALAN COPSEY IN SUPPORT OF STATE'S EMERGENCY MOTION FOR STAY PENDING REVIEW

I, Alan D. Copsey, declare the following to be true and correct under penalty of perjury under the laws of the State of Washington:

1. I am over the age of eighteen and competent to testify in a court of law.

2. I am one of the counsel of record for the State of Washington in this matter.

3. On November 27, 2019, the King County Superior Court issued an Order granting Plaintiffs' Motion for Preliminary Injunction in this matter.

4. Later that same day, Attorney General Ferguson issued a statement that the Office would file an emergency appeal of the court's decision directly with this Court, and that the team would be working over the Thanksgiving weekend to get this done. This statement was widely reported in the press.

5. On the morning of Monday, December 2, prior to 8:00 am, I sent an email to all counsel of record formally informing them of our intent to file an emergency motion to stay the preliminary injunction and allow I-976 to go into effect on Thursday, December 5, 2019, as it otherwise would. Attached to this Declaration as Exhibit 1 is a true and correct copy of the email I sent.

6. David Hackett, attorney for plaintiff King County, responded to the email I sent. After receiving his email, I left voicemails for Carolyn Boies, attorney for the City of Seattle, and Matthew Segal, attorney for plaintiffs Washington State Transit Association, Association of Washington Cities, Port of Seattle, Garfield County Transportation Authority, Intercity Transit, Amalgamated Transit Union Legislative Council of Washington, and Michael Rogers. In each voicemail, I stated that I wanted to make sure counsel had seen the email I sent earlier informing them that we would be filing an emergency motion today, and I left my telephone number and asked them to call if they had questions. I communicated with Mr. Hackett,

Ms. Boies, and Mr. Segal, because they were the counsel who appeared and argued at the preliminary injunction hearing in the Superior Court on November 26, 2019.

7. The State's motion for a stay should be decided on an emergency basis because, as detailed further in its motion and supporting materials and summarized here, adequate relief cannot be given if the motion is considered in the normal course.

8. Specifically, a majority of voters (more than one million Washingtonians) voted to approve Initiative 976, which is set to go into effect on December 5, 2019. *See* Const. art. II, § 1(d). Under I-976, Washington motor vehicle owners are expected to save roughly $300 million annually in state motor vehicle taxes and fees starting December 5, 2019.

9. The preliminary injunction disrupts the status quo. Absent a stay, the State will be compelled to continuing collecting—and Washingtonians will be required to pay—the fees, taxes, and other charges that the Washington electorate repealed and reduced by passing I-976.

10. As more than 500,000 motor vehicle registrations are due for renewal in December 2019 alone, after December 5, 2019, this will have a significant and immediate impact on Washington motor vehicle owners who should no longer have to pay these fees after December 5, 2019. The

public has a strong interest in not being forced to pay the fees, taxes, and other charges that they repealed through statewide initiative.

11. Additionally, without a stay that allows I-976 to go into effect as the Constitution envisions, the will of Washington voters will be impaired. As this Court has previously recognized, "the right of initiative is nearly as old as our constitution itself, deeply ingrained in our state's history, and widely revered as a powerful check and balance on the other branches of government." *Coppernoll v. Reed*, 155 Wn.2d 290, 297, 119 P.3d 290 (2005). More than one million Washington voters chose to exercise "[t]he first power reserved by the people" to significantly reduce their motor vehicle taxes and fees. The trial court's injunction of I-976 overrides the will of those voters and ignores the public's strong interest in having its "powerful check and balance" implemented as enacted. *Id.* This substantial injury to the will of the Washington electorate weighs heavily in favor of staying the injunction and allowing I-976 to go into effect.

12. In addition, there also are significant public costs associated with issuing the injunction. If the trial court's injunction is not stayed and I-976 is ultimately upheld, the Department of Licensing will be required to issue refunds for overpayments made during the pendency of the injunction. These refunds will come at a significant cost to taxpayers. This is because processing refunds is time-intensive and involves multiple layers of review.

As detailed in the motion, it would take the Department of Licensing at least 45,000 business hours to issue refunds for each month the injunction is in place, requiring an additional 41.5 full-time employees. These significant and avoidable public expenditures also favor staying the trial court's preliminary injunction.

SIGNED at Olympia, Washington this 2nd day of December, 2019.

ROBERT W. FERGUSON
Attorney General

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Exhibit 1

From:	Copsey, Alan D (ATG)
To:	"David.hackett@kingcounty.gov"; "David.eldred@kingcounty.gov"; "Jenifer.merkel@kingcounty.gov"; "Erin.Jackson@kingcounty.gov"; "Carolyn.boies@seattle.gov"; "Erica.franklin@seattle.gov"; "John.schochet@seattle.gov"; "Marisa.Johnson@seattle.gov"; "paul.lawrence@pacificalawgroup.com"; "matthew.segal@pacificalawgroup.com"; "jessica.skelton@pacificalawgroup.com"; "shae.blood@pacificalawgroup.com"; "sydney.henderson@pacificalawgroup.com"
Bcc:	Purcell, Noah Guzzo (ATG); Young, Alicia O. (ATG); Smith, Karl David (ATG); Fraas, Lauryn (ATG); Padilla-Huddleston, Dionne (ATG); Jensen, Kristin D. (ATG); Mills, Morgan Rae (ATG)
Subject:	Garfield Cty. Transp. Auth. v. State -- notice of motion to be filed today
Date:	Monday, December 02, 2019 7:36:03 AM

Re *Garfield County Transportation District et al. v. State*, No. 19-2-30171-6-SEA (King County Superior Court).

Counsel:

As you may have seen in the announcement issued by the Attorney General on November 27, and subsequently reported in various media outlets, we will be filing an emergency motion in the Washington Supreme Court today, asking the Court to enter an order staying the preliminary injunction issued by the superior court in this case on November 27, and to issue that order before Thursday, December 5, 2019. Of course, we will serve you with a copy of the motion at the same time as we file it with the Supreme Court.

Sincerely,

Alan D. Copsey

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